



Generally Speaking

Comings and Goings

Welcome to Paralegal **Ida Bickford**, and Administrative Clerk **Michelle Kaiser**, OSPA. Ida was a former victim/witness paralegal in the Dillingham DAO, and Michelle is working on a degree in justice and criminal law.

Also welcome LOA I **Caryn Byus** (Oil, Gas and Mining Section), Case Management Clerk **Cora Hart** (Legal Support Services Section), and LOA I **Kimberley Prescott** (Natural Resources Section).

Congratulations to **Tiffany Roberts** who was promoted to a LOA I in the Child Protection Section, and **Robert Harris** on his promotion to a LOA I in the Commercial and Fair Business Section.

Sheri Lopez transferred to a LOA II position in the Labor and State Affairs section; she will also provide secretarial support to Statewide Office Chief, Nancy Gordon.

The Nome Child Protection office welcomed **AAG John Ptacin** who began work in the office on March 5, 2007.

The Kotzebue DAO bids farewell to long-time Paralegal **Paul Nolton** "all-around good guy." The office thanks him for his hard work.

Child Protection

New CINA cases based upon allegations in OCS petitions:

Police responded to a disturbance and found a mother and father with BACs of .219 and .400. The father was on probation for a murder conviction and the mother was on probation for a manslaughter conviction. Since neither of them were supposed to drink, they were arrested for probation violations. OCS was unable to locate relatives able to care for the 4- and 9-year-old children so they were placed in foster care.

A 9-year-old child was taken to the hospital after his parents called police to report a dresser had fallen on him twice that day. The dresser was still on top of the child when police arrived. Emergency room personnel reported that the previous week the child had been in the ER because a box of tools had fallen on his head. The parents' explanation was that witches were telepathically heaving items at the child. The family attributed other suspicious events reported to OCS (as well 89 911 calls to police in past few years) to witchcraft. OCS had received numerous past reports of concern about the family. The father is a registered sex offender and the mother has limited cognitive abilities. As a result of the recent events involving the 9-year-old and the past history, OCS assumed custody of the child.

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OCS took custody of children ages 6, 5, and a set of twins age 2, due to chronic neglect. The home was unsanitary and dangerous. The children were observed to be dangling from stair rails, stomping on another child's chest, and playing in a plastic garbage bag. The children had various injuries due to dangerous objects in the home, including broken windows and metal wires. The children had numerous bite marks from biting each other.

A mother with three other children in state custody gave birth to a premature child who tested positive for cocaine. The mother acknowledged having used cocaine, Oxycontin and IV methadone. She also had signs of methamphetamine use. Both parents acknowledged they were unable to care for the child and agreed to placement with a grandmother.

OCS took custody of the newborn of a woman who has two other children in state custody. She stated she was financially, mentally and physical unable to care for the child.

A developmentally disabled child was discovered to have numerous burns on her body consistent with cigarette lighters. Her caretakers were her grandparents and their explanations were inconsistent with the child's injuries. They had failed to get medical attention for the girl and her injuries were severe enough to require skin grafts and hospitalization. She was taken into custody.

A father with mental illness was staying with his children at a shelter where he was observed to be acting in an erratic and dangerous manner. When police attempted to take him to the hospital he bit them, causing them to arrest him. The children were taken into custody. The location of their mother was unknown.

Numerous children were taken into custody as a result of serious risk of harm as a result of their parents' substance abuse and domestic violence.

Activities. Ten attorneys in the Anchorage office attended a two-day training on OCS' new Safety Assessment procedures. The attorneys found it very helpful.

Commercial and Fair Business

Big Game Board summarily suspends guide/outfitter. On March 20, 2007 at its regular meeting, the Big Game Commercial Services Board ("Board") granted the petition filed by the Division of Corporations, Business and Professional Licensing ("Division") and summarily suspended for 30 days (the maximum amount of time allowed under AS 08.54.710(i)) the license of Dillingham guide/outfitter Byron Lamb, based on his recent conviction of eight counts of felony assault. Lamb, who is scheduled to be sentenced on April 24, 2007, was convicted by a Dillingham jury of recklessly placing his own client, another guide/outfitter, his guide/outfitter's two clients, and a pilot working for that guide/outfitter, in fear of imminent serious physical injury by means of a dangerous instrument - his airplane. The assaults took place on two separate days in September 2005 near Dillingham where Lamb was providing big game hunting services.

The Board found Lamb poses a clear and immediate danger to the public's health and safety, especially since he had scheduled to guide a series of bear hunts beginning March 26, 2007. Lamb has challenged the summary suspension of his license and a hearing will occur on April 2, 2007 before an administrative hearing officer. The division also has filed an accusation against Lamb based on the same convictions. AAG Robert Auth is representing the division in this proceeding.

Administrative Law Judge recommends denial of psychological Associate license application.

In March 2007 Chief Administrative Law Judge Terry Thurbon issued a proposed decision recommending the Alaska Board of Psychologist and Psychological Associate Examiners deny Peter

Igwacho's application for a license as a psychological associate. Igwacho had pled guilty to a charge of driving while intoxicated in Minnesota in 2002. This conviction would not have disqualified Igwacho for a psychological associate license, but on the license application Igwacho asserted he had never been convicted of a crime.

The board learned of the DWI conviction only after one of Igwacho's college professors reported it in a letter of reference. They denied his license application because he had misrepresented his qualifications to the board.

After an administrative hearing ALJ Thurbon determined the applicant's false statement on the license application constituted grounds for the denial of his application. The case now returns to the Board for a final decision. AAG Gayle Horetski represented the Division of Corporations, Business and Professional Licensing in the matter.

Administrative proceeding dismissed after license applicant indicted for several felony crimes.

During March 2007 Administrative Law Judge James Stanley ordered the dismissal of an administrative hearing requested by Chase Walters, after Walters was arrested and subsequently indicted for three felony and two misdemeanor crimes. Walters led the Anchorage police on a chase, and collided with a patrol car, while his infant daughter was in the vehicle. Walters had applied for a license as a real estate salesperson. He was on probation for a federal conviction of felon in possession of a firearm.

Under AS 08.88.171(c), a real estate salesperson license may not be issued to a person who has been convicted of certain specified offenses or "any other felony involving moral turpitude". Walters argued that felon in possession of a firearm is not a crime of moral turpitude, but the Real Estate Commission disagreed and denied his license application. Walters requested a hearing, but that had to be postponed after he was arrested and lodged at the Anchorage jail. After his indictment for the

new state crimes, the federal probation officer also filed a petition alleging the violation of Walters' federal probation conditions. Walters apparently decided he has more pressing concerns, and has withdrawn his request for an administrative hearing on the license denial. AAG Gayle Horetski handled the case.

Court dismisses administrative appeal for failure to prosecute.

Jose Guarderas applied to be licensed as a real estate salesperson. At the time, he was under indictment for a class C felony of driving while intoxicated (third DWI within ten years). The Real Estate Commission determined a felony DWI is a "felony involving moral turpitude" under AS 08.88.171(c) and denied the license application.

Guarderas requested an administrative hearing, and the ALJ issued a proposed decision concluding that a felony DWI is a felony involving moral turpitude and recommended denial of the license application. After the REC accepted the ALJ's proposed decision, Guarderas filed an appeal to the superior court. Several notices sent to Guarderas were returned as undelivered, and the court has ordered the appeal dismissed for failure to prosecute. AAG Gayle Horetski represented the Division of Corporations, Business and Professional Licensing at the hearing and upon appeal.

Alaska Supreme Court affirms denial of PFD.

On March 2, 2007, the Alaska Supreme Court issued a decision affirming the superior court's decision to uphold the PFD Division's denial of a 2003 dividend to Peter Eagle. AAG Chris Poag represented the PFD division in this matter and handled the appeals.

Mr. Eagle was absent from Alaska for 16 years while serving in the Navy. He received a PFD through an allowable absence from 1986 to 1995. In 1995 he was denied a dividend because he failed to rebut the presumption that his absence indicated an intent not to return and remain in Alaska. He did not appeal this decision. In

October of 2002 he left the military and returned to Alaska. He applied for a 2003 dividend.

The PFD Division denied him a dividend because he had severed his residency from Alaska and was absent from the state more than 180 days in 2002. Mr. Eagle argued the Federal Soldiers' and Sailors' Civil Relief Act (SSCRA) preserved his residency for purposes of the dividend during his absence from Alaska while serving in the Navy. The PFD Division reviewed the SSCRA and concluded this federal law did protect his residency for purposes of voting and taxation, but not for purposes of qualifying for a dividend.

Mr. Eagle appealed this decision to the superior court. The superior court agreed with the Division and upheld the PFD Division's denial. On appeal to the Alaska Supreme Court, Mr. Eagle argued the SSCRA preemption issue and also raised a new appeal issue, an equal protection challenge. On behalf of the PFD Division, AAG Poag argued the SSCRA did not apply to the PFD residency determination and that Mr. Eagle had waived the equal protection issue by failing to raise it below.

The Supreme Court affirmed the superior court's decision, holding that: 1) the SSCRA did not protect his residency for purposes of the dividend; and 2) Mr. Eagle had waived the equal protection issue.

Environmental

***Defenders of Wildlife v. EPA* appeal.** Eleven states, including Alaska, filed an amicus brief in the U.S. Supreme Court supporting EPA and Arizona in their appeal of the Ninth Circuit's decision invalidating EPA's approval of Arizona's NPDES permit program, based on the Endangered Species Act (ESA). The core issue is whether the ESA adds another criterion for approval of a state permit program to those already listed in the Clean Water Act. Alaska is in the process of seeking EPA approval of the state's permit program, so the Court's decision will govern what

kind of ESA consultation, if any, will be required of EPA in its consideration of the state's program application.

Tom Copeland and Riki Ott v. Ernesta Ballard, Commissioner, Department of Environmental Conservation. Judge Schally, Superior Court Judge pro tempore, affirmed former DEC Commissioner Ballard's decision dismissing intervenors Copeland and Ott from an administrative hearing requested by Tom Lakosh, for failure to pay their share of the agency record preparation costs.

On appeal to superior court, Copeland and Ott claimed: 1) the dismissal resulted in an unconstitutional denial of their right to a fair administrative hearing; 2) the commissioner and the department arbitrarily denied them access to the agency record, resulting in a continuous due process violation; 3) the commissioner arbitrarily apportioned the costs of the preparation of the agency record; 4) the commissioner and the department unreasonably delayed preparation of the record and then used the delay against them; 5) the commissioner improperly dismissed their appeal on the grounds that they failed to timely pay the costs of the preparation of the record, despite having reasonably submitted payment prior to the preparation of the record; and 6) 18 AAC 15.237 and AS 40.25.122 are unconstitutional as applied. Judge Shally rejected all of these claims and affirmed the commissioner's decision.

Amendment to Ft. Wainwright CERCLA Cleanup Agreement. In 1992 the state signed a cleanup agreement with the Army and EPA that set out the process for addressing base contamination under CERCLA. The Record of Decision (ROD) selecting remedial actions and cleanup levels came out several years later. In 2005 the Army discovered a new area of contamination when it began construction of new housing on the base. The parties to the prior agreement realized they needed a mechanism to add new sites to the cleanup process, even post-ROD, and so they negotiated an amendment to the agreement creating such a process. That amendment is

currently being signed by upper level management at the Army, EPA, ADEC and DOL.

Aniak White Alice Communications System Site Characterization Agreement. The state, the U.S. Army Corps of Engineers, AT&T, ITT Corporation, Lockheed Martin Corporation, and the Kuspuks School District reached agreement to pay for a \$230,000 characterization investigation of polychlorinated biphenyl contamination of the old septic system at the former Aniak White Alice Communications System facility. The facility was operated by the U.S. Air Force and its operations and maintenance contractors from 1958 to 1979 as a part of the DEW Line. This site characterization information will be used to plan and implement further cleanup of the former military site.

[Human Services](#)

Litigation Update

The section prevailed in federal district court on a motion to dismiss in *Longenecker v. DHSS*. This case was brought when a family requested a Medicaid fair hearing on whether the state would pay for a non-enrolled provider. The federal court agreed with the section's argument that this was not the type of action warranting a fair hearing.

The section also resolved a number of pending Medicaid cases – mostly notice cases. The following matters were settled: *Solski*, *Bayless*, *Krone* and *Snyder*. All but *Snyder* will have continued briefing related to attorneys' fees; the *Snyder* settlement included a small amount of attorneys' fees which is being paid for by the client agency. These are good settlements in that new notices were agreed to and approved by all parties, and will allow agency staff to work on day-to-day matters rather than discovery and other issues related to the litigation. The agency is pleased with these outcomes.

Section Chief Stacie Kraly argued *Fuhs v. Commissioner Jackson and Providence* before the Supreme Court. The argument went very well, and we await the Court's decision.

Medicaid

Subrogation/Liens

At this time the Medicaid lien/subrogation caseload is at 704 active files and is continuing to increase. AAG Tim Twomey and staff Kathey Virgin and Shelby King recovered \$195,450.92 this month. Year to date, \$312,199.88 has been recovered.

Agency Matters

Medicaid Audits

Currently, the section is defending DHSS in 17 appeals regarding independent audits performed by DHSS w/respect to Medicaid providers. AAG Rebecca Polizzotto is the assigned attorney to these appeals. A central theme in each appeal is the use of statistical extrapolation as part of the audit process to determine the amount of overpayment to be recouped by the department. This is an issue of first impression for Alaska courts and is resulting in a great deal of motion practice. So far, the parties have fully briefed two important issues: whether Appellant was denied due process and is thus entitled to a trial de novo at the superior court level because an evidentiary hearing wasn't held below; and whether the Appellant may supplement the record on appeal.

The Court sided with the department on both of these issues and denied the Appellant's motions.

Agency Advice

AAGs Robin Fowler and Nevhiz Calik have taken over the day-to-day advice and much of the litigation related to Medicaid. They are attending weekly meetings related to the Personal Care

Program and Quality Assurance, and are developing clear, clean legal policy and procedures for each of these programs.

Licensing

AAG Rebecca Polizzotto represents DHSS with respect to licensing actions imposed by DHSS. Currently, the section is defending the department's actions in five appeals regarding licensing. In addition to these five administrative hearings, AAG Polizzotto continues to travel throughout the state providing training on the new statutes and regulations governing licensing. She is finishing work on a new field manual for child care licensing workers. Training and the field manual should be complete by the end of April 2007 for child care licensing.

Labor and State Affairs

Elections

On March 19, 2007 Alaskans for Independence filed a new lawsuit challenging the Lieutenant Governor's denial of certification of an initiative application to put the question of Alaska's independence from the United States on the ballot. The denial of a similar initiative application was upheld by the Alaska Supreme Court previously in *Kohlhaas v. SOA, Lt. Gov.*, 147 P.3d 714 (Alaska 2006), which held that secession is an improper subject for an initiative because of its clear unconstitutionality. AAG Sarah Felix, who represented the state and Lieutenant Governor in *Kohlhaas*, will also handle this action.

Employment

On March 9, 2007 the Alaska Labor Relations Agency issued an order in *Alaska Correctional Officers Ass'n v. State*, declaring that the state was not required to negotiate with its correctional officers' union representative over the most recent legislative changes to the state retirement system (Tier IV) because the statutory retirement

scheme was not a fringe benefit and, therefore, not a mandatory subject of bargaining. A full decision with the agency's analysis will follow at a later time. An interesting aspect of the decision is that Art Chance, former state labor relations manager and director, represented ACOA against the state. AAG Bill Milks represented the state.

Human Rights Commission

Pyramid Printing v. ASCHR. In this appeal from the commission's decision that an employee had been sexually harassed at the workplace, the Alaska Supreme Court on March 16, 2007 upheld most of the commission's remedial order. The court upheld the award of back pay, rejecting the employer's argument that back pay should be limited after the employee refused an offer of reemployment. The Court agreed that the employee reasonably believed that returning to work would subject her to the same sexually harassing conditions that caused her to leave. The Court upheld an award of vacation pay, reasoning it was not a double recovery but, in effect, additional wages for services performed. In addition, the Court rejected the employer's argument that the commission had improperly "pierced the corporate veil" by requiring the shareholder/owners of the company to undergo sexual harassment training.

The Court held that the doctrine of corporate-veil piercing did not apply to a remedial order and the order was within the discretion of the commission. However, the Court did reverse the commission's award of interest. The commission had awarded interest at 10.5 percent, which was the rate set in an administrative regulation. After making the award, the commission amended the regulation to set the rate at the statutory floating rate governing judicial actions. The Court concluded the former 10.5 percent rate over-compensated the employee's loss. AAG Bill Milks handled this appeal for the commission.

Motor Vehicles

On March 8, 2007 Superior Court Judge Joannides issued a decision in *Hanson v. State*, an administrative appeal of Hanson's license revocation. The revocation followed an arrest for driving under the influence after a preliminary breath test registered a blood alcohol content of .106. The court remanded the case to the Division of Motor Vehicles for the hearing officer to reconsider her findings in light of the judge's questions about the sufficiency of the evidence supporting the reasonableness of the officer's suspicions to make the initial investigative stop. AAG Margaret Paton-Walsh represented the state.

Procurement

Nancy Oliver dba Safety Waste Incineration v. DOC. This month, the superior court affirmed the decision of the Department of Corrections to award its waste disposal contract to a new company, rather than the company that had been awarded past contracts. The previous contractor protested and the department denied the protest. The contractor appealed. Applying the rational basis test because the issue was within the agency's special expertise, the court concluded the protester had not proven that the successful bidder could not perform the contract and upheld the department's contract award. AAG Rachel Witty represented the state.

Safety Waste Incineration v. State, DHSS. On March 12, 2007 Judge Bolger of the Kodiak Superior Court upheld the decision of DHSS to by-pass the low bidder responding to an invitation to bid on a medical waste disposal project. The department disqualified the low bidder as non-complying with the specification because of the bidder's history of noncompliance with federal environmental requirements. The court concluded after review that relying upon the EPA's determination of the company's history of violations was reasonable, and denied the company's protest. AAG Rachel Witty also represented the state in this case.

Retirement and Benefits

On March 9, 2007 the Alaska Supreme Court denied a petition for rehearing in *Public Employees' Retirement System v. Gallant*, but it reissued its earlier decision with additional text addressing the issue raised in the petition – the applicability of the federal Equal Protection clause to the cost-of-living adjustment provided to public employee retirees residing in Alaska. The Court noted that, because it issued its decision under the Alaska Constitution's more stringent equal protection requirements, it did not need to apply the federal clause. AAG Neil Slotnick represented PERS in the appeal.

On March 12, 2007 in a case handled by AAG Joan Wilkerson, the Office of Administrative Hearings issued a decision granting the administrator's motion for summary adjudication in a case concerning a dispute over the calculation of a beneficiary's wage for the purpose of calculating occupational disability benefits.

On March 19, 2007 the Commissioner of Administration adopted OAH's proposed decision and order, affirming the benefits system administrator's decision to deny a claimant's request for a waiver of the 90-day deadline to apply for occupational disability benefits. To file a late application, an applicant must show that extraordinary circumstances prevented a timely application. The administrator had concluded the unvested applicant's mistaken belief that vesting was a requirement for eligibility for occupational disability benefits was not an "extraordinary circumstance." AAG Toby Steinberger handled this matter.

Special thanks to AAG Kathleen Strasbaugh for taking on a retirement and benefits claim and to AAG Mike Barnhill for his work in support of the department's proposed operating budget.

Legislation and Regulations

During March 2007, the Legislation and Regulations Section spent an active month reviewing legislation and amendments for the 2007 regular session of the Alaska State Legislature. The section also edited several administrative orders for consideration by the governor.

Regulations projects reviewed in the section included:

- (1) Department of Revenue (oil and gas production tax; commercial passenger vessel excise tax);
- (2) Department of Health and Social Services (Medicaid resource-based relative value scale (RBRVS) payments; Medicaid drug reimbursement; personal care assistant services);
- (3) Board of Dental Examiners (examinations, licensure, and inactive license status); and
- (4) Board of Fisheries (Bristol Bay finfish).

Natural Resources

Board of Game

From March 2-12, 2007 the Board of Game met in Anchorage. AAG Kevin Saxby attended and advised throughout the meeting, which covered essentially all game-related issues in Southcentral Alaska. Notable actions included the closure of a brown bear hunting area near McNeil River, following receipt of over 40,000 written public comments in favor of doing so. The board also adopted new requirements for more stringent meat salvage, income qualifications, and several other changes to Alaska's most controversial subsistence hunts in the Nelchina Basin area between Anchorage and Fairbanks.

Predator Control Lawsuits

In the ongoing predator control lawsuits several events have occurred. First, at the state's

request, the suit brought by the Defenders of Wildlife, Alaska Wildlife Alliance, and Sierra Club and the second one brought by the Friends of Animals, have been consolidated. Then, a private attorney, Mr. Ron West, moved to intervene as a party and that motion was granted following the state's non-opposition. On March 27, 2007 two requests for temporary restraining orders and preliminary injunction were filed in the consolidated cases. One, brought by the Defenders of Wildlife, et al., seeks to halt the recently announced incentive program that would pay wolf control permittees for turning in biological specimens. The other, brought by the Friends of Animals, et al., seeks to halt the entire program. An initial hearing on the TROs will be held on March 30, 2007.

State, Division of Agriculture v. Mat-Su Chapter of the Alaska Farm Bureau. On March 1, 2007 Judge Cutler held a settlement conference in this case. AAGs Steve Ross and Tina Otto attended on behalf of the state. The parties reached a tentative resolution whereby the Mat-Su Chapter acknowledged that the state owns the Alaska Grown certification mark.

Zaugg and LaCroix v. State of Alaska, Dept. of Fish & Game, and Dept. of Public Safety. On January 6, 2005, Gary Zaugg and Stephen LaCroix filed a complaint in State District Court in Juneau for the return of geoducks seized by the state or damages for the value of those geoducks. On June 7, 2005, the case was transferred to the State Superior Court in Juneau. The state counter-claimed for the value of wild geoducks harvested and sold by the plaintiffs. On September 2, 2005, the parties stipulated to stay the proceedings for the purpose of attempting to negotiate a settlement of this and other related cases. On February 28, 2007 the parties agreed to settle the case by the state paying \$3,000.00 to the plaintiffs, Zaugg and LaCroix. The parties agreed to stipulate to dismissal of this case with prejudice with each side to bear its own costs and attorney fees.

May v. CFEC. On March 2, 2007, AAG Vanessa Lamantia filed the state's brief in the

Alaska Supreme Court in this appeal of a CFEC decision denying the appellant's eligibility to apply for a permit in the Southern Southeastern Inside Sablefish (black cod) pot fishery. The superior court affirmed the CFEC's findings that May was ineligible to apply for a permit, and even if he was eligible, he is not entitled to any points and therefore lacks standing to challenge the regulation setting the maximum number of permits for the fishery.

Wilber v. Commercial Fishery Entry Commission.

On March 21, 2007 the state's brief was filed with the Alaska Supreme Court in *Wilber v. CFEC*. Wilber was denied a limited entry permit for the harvest of geoducks and claims the CFEC both misconstrued and misapplied the statutory provisions regarding hardship associated with the initial issue of entry permits. At issue in the case is whether the CFEC has discretion under AS 16.43.250 to interpret or modify the six enumerated criteria of hardship in a manner that is reasonable for a particular fishery.

The Supreme Court has previously ruled in *Haynes v. CFEC*, that the CFEC has the discretion to completely disregard one or more of the six hardship criteria where reasonable for the fishery. In the geoduck fishery, the CFEC regulation addresses the "number of years of participation in the fishery, and the consistency of participation during each year" by combining the applicant's 1995 harvest of geoducks with the small harvest from a single four-day opening in 1996. Wilber contends that once the CFEC determined to use the past participation and consistency criteria in this fishery, the CFEC lacks the authority to construe the word "year" in any manner other than a 365 day period.

Situk River boat launch. On March 22 2007, AAG John Baker filed an administrative appeal of a decision notice and environmental assessment by the U.S. Forest Service, Yakutat Ranger District, determining to relocate the existing boat launch at Nine Mile of the Situk River to an area downstream. The current boat launch is within the Alaska Dept. of Transportation's highway

easement for Forest Highway 10, and is operated and maintained by DOT and the Alaska Department of Fish and Game. The Forest Service decision takes the position that the boat launch is not subject to state jurisdiction on the theory it is not within the definition of "highway purposes" allowed within the DOT easement. The state disputes this arguing the boat launch is a reasonable "incidental subordinate use" of the right-of-way.

Board of Fisheries meeting coverage. AAG Lance Nelson attended a five-day Board of Fisheries meeting devoted to considering proposals on statewide finfish issues. Among other things, the board unanimously rejected a proposal to turn the Sustainable Salmon Fisheries Policy from regulation to policy. The legislature is currently considering enacting a similar policy as statute.

[Opinions, Appeals and Ethics](#)

The section provided ethics training for the Alaska Railroad Board on March 9, 2007. AAG Judy Bockmon attended the Personnel Board meeting on March 15 and reported on the proposed amendments to the Ethics Act now pending in the legislature.

The section continued assisting the Governor's Office with ethics legislation. Assistance included testifying before legislative committees, discussing proposals with individual legislators and their staff members, and responding to alternatives to the governor's proposals.

Five conflict waivers were considered and granted with two requests pending.

Appeals/Litigation

A.B. v. State, Office of Children's Services.

AAG Mike Hotchkin filed the state's appellee brief in this case. This is the sixth trip to the State Supreme Court for this child protection case (three interlocutory petitions for review, an appeal from the trial court's decision denying placement

of the child with the mother's relative, and an appeal as to whether the mother was entitled to a jury trial at the adjudication stage). Of 28 issues raised by the pro se mother in the present appeal from the termination of her parental rights, the most interesting stems from the trial court's decision to hold the termination trial without the mother either present or represented. The trial had been continued several times and on the date finally set for trial, the mother called in to the court to announce she was out of the country on vacation, she had only a few minutes on a calling card, and they would have to do the trial some other time. The mother had earlier refused representation but had been appointed advisory counsel who was present. The mother argues a due process violation; the state responds she chose to be absent and was attempting to manipulate the system to delay permanency for the child yet again.

Alaska Dental Society and American Dental Association v. Alaska Native Tribal Health Consortium.

AAGs Paul Lyle and Mike Hotchkin filed the state's reply to its motion for summary judgment in the suit filed by the American Dental Association and the Alaska Dental Society to prevent federally-certified Dental Health Aide Technicians (DHATs) from providing dental care to rural Alaska Natives. The ADA and ADS sued to require enforcement of state dental licensing laws against DHATs, who are certified to provide dental care to rural Natives by the federal Indian Health Service. The state's position is that state dental licensing laws are preempted by the federal scheme and are thus unenforceable against DHATs, and that enforcement of occupational licensing laws is entrusted to the discretion of the state attorney general.

Jacob v. State. AAG Megan Webb filed an appellee brief on behalf of the Office of Children's Services in this case. The Jacobs appealed the trial court's dismissal of a civil action they initiated in March 2004. Through that action, the Jacobs asserted OCS failed to provide them notice that it had assumed emergency custody of their three grandchildren,

and failed to provide them with any subsequent notices regarding their grandchildren's CINA case. They also asserted they were entitled to physical custody of the children. They sought declaratory and injunctive relief on their own behalf and injunctive relief on behalf of other grandparents.

While granting part of the declaratory relief, the trial court declined to grant the remaining relief, instructing the Jacobs to seek substantive relief through their grandchildren's CINA case, and then dismissed the case. Although they have already received relief through the CINA case, the Jacobs appealed the trial court's order dismissing the civil case. The legal issues involved in the appeal were whether the appeal is moot, whether the trial court abused its discretion when it dismissed the civil action and instructed the Jacobs to intervene in the CINA case, and whether the Jacobs lacked standing to pursue relief on behalf of third parties.

J.B. v. State. AAG Megan Webb filed an appellee brief on behalf of the Office of Children's Services in this case. This appeal involves a child-in-need-of-aid case in which the trial court adjudicated a teenage girl as a child in need of aid under AS 47.10.011(8) and granted legal custody to OCS. OCS originally had assumed legal custody of the girl's brothers as well. However, based on the recommendation of the boys' therapists, they had been returned home and their cases dismissed.

Although the boys had not suffered mental injury or abuse as a result of conditions in the home, the testimony at both the temporary custody hearing and the adjudication hearing regarding the girl demonstrated she suffered mental injury as a result of the disciplinary techniques employed by the mother and step-father, the potential physical and emotional impact of such techniques on her, the step-father's verbal abuse, and the resulting atmosphere of fear and anxiety that had been created in the home. The mother challenged the trial court's finding there was a preponderance of evidence that the girl had suffered mental injury as defined by AS 47.17.290(9).

Z.P. v. State. AAG Megan Webb also filed an appellee brief on behalf of the Office of Children's Services in *Z.P. v. State*. This appeal involves a child-in-need-of-aid case in which a father's parental rights to his two sons were terminated. The father was never the primary caregiver for these children, but when not incarcerated, he would sporadically visit them. This limited contact and support ceased in early 2004 after which the father failed to have any contact with his children, and failed to make any efforts to provide for their emotional, physical, or educational welfare.

Although OCS had legal custody of the children, the father also failed to communicate with it after May 2004 or to engage in the services identified in his case plan. In August 2005 the trial court terminated the father's parental rights to these children. The issues on appeal were whether the mere fact of the father's incarceration precludes the trial court from finding the boys were children in need of aid under AS 47.10.011(1) (abandonment); whether there was clear and convincing evidence of abandonment; and whether OCS made reasonable efforts to reunify the family.

Walker v. State. AAG Joanne Grace filed an appellee brief in this tort action arising from an ATV accident that resulted in death and injuries. The plaintiffs hit a cable that an adjacent landowner had strung across a dirt access road. The superior court granted summary judgment to the state finding the state did not have a duty to maintain the access road which was owned by the Bureau of Land Management and not part of the state road system. The plaintiffs got a large judgment against the rest of the defendants at trial then appealed the summary judgment against the state.

Regulatory Affairs & Public Advocacy (RAPA)

Filed Testimony

U-06-134, CEA rate case. On March 27, 2007 RAPA pre-filed the testimony of its witnesses in the rate case filed by Chugach Electric Association (CEA). CEA seeks an overall rate increase of approximately \$2.8 million by substantially altering its rate structure: reducing the rates of its *retail* customers while increasing the rates of its *wholesale* customers.

RAPA pre-filed the direct testimony of: Janet Fairchild, staff financial analyst, regarding the utility's operating expenses and revenues; contract expert, Ralph Smith, regarding the utility's unbundled financial schedules and proposed allocation between G&T and distribution; and staff engineering analyst, Tim McConnell, regarding depreciation.

Cross-Appeal

U-05-43/44, GHU/CUC rate case. Golden Heart Utilities (GHU) and College Utilities Corporation (CUC), investor-owned utilities that provide water and sewer utility service in the Fairbanks service area, filed a rate case seeking double-digit rate increases for both services. After a contested adjudicatory hearing, the RCA issued a decision adopting numerous RAPA advocacy positions which resulted in the RCA ordering refunds to ratepayers. The utility successfully sought reconsideration on several points in contention.

On March 22, 2007, the utility appealed to the superior court in Fairbanks contending that the RCA erred on 18 points regarding RCA disallowance of various rate case expenses, rate of return, and other adjustments. The utility also seeks a stay of its refund obligation until its appeal is decided. RAPA AAG Sam Cason is preparing a cross-appeal filing on issues regarding synchronization to year-end rate base and elimination of rate base reduction for unallocated

contributions in aid of construction (CIAC). The deadline for cross-appeal is April 5, 2007.

Torts & Workers' Compensation

Constitutional claim dismissed. On October 13, 2006, Steven Henry Dilts (pro se) filed a lawsuit in U.S. District Court (Ketchikan) against a number of state officials and two Alaska State Troopers alleging violation of his First and Fourth Amendment rights under the U.S. Constitution. Dilts alleged the trooper entered Dilts' father's residence without permission or a search warrant and that he coerced Dilts' sister into signing a medical release. Dilts purported to represent his family as well as seeking to proceed *in forma pauperis*. The judge denied Dilts' motion for leave to proceed *in forma pauperis* and ordered Dilts to either voluntarily dismiss his claim or file an amended complaint. Dilts did neither and the case was dismissed by the court (without prejudice) on Dec. 19, 2006. The case was defended by AAG Kate Sheehan.

Fairbanks trial court grants summary judgment on NIED claim brought by wife of inmate. In 2003 an inmate at Fairbanks Correctional Center, Donald Hymes, and his wife filed suit alleging medical malpractice against the doctor and physician's assistant at the facility. After the trial court granted summary judgment to defendants, the trial court was reversed on appeal for failure to allow the pro se additional time to obtain necessary expert evidence to support his claims.

On remand, the trial court granted defendants' motion for summary judgment for failure to exhaust administrative remedies, which left only the inmate's wife's claim for negligent infliction of emotional distress. Plaintiffs petitioned for review of the dismissal based upon failure to exhaust administrative remedies but after additional briefing by defendants requested by the Supreme Court, the petition was denied.

This month the trial court granted defendants' motion for summary judgment on the remaining

NIED claim brought by Mrs. Hymes. Judge Downes ruled that plaintiff did not evidence that her emotional distress was accompanied by physical injury, and that neither exception to the rule that there must be physical injury applied. Plaintiff failed to meet either the bystander exception or the pre-existing duty exception. The trial court granted summary judgment. In a further ruling, the trial court also denied plaintiffs' attempt to reopen their medical malpractice claims by submitting an affidavit by a California doctor that failed to meet the requirements of Civil Rule 76. The affidavit was submitted four months after the deadline imposed under a granted extension of time (and more than three years after commencement of their lawsuit). Plaintiffs have filed for reconsideration. This matter is being defended by AAG Gail Voigtlander.

Transportation

High tower lighting project claim settled. The contractor installing giant light poles along Anchorage highways claimed the Department of Transportation and Public Facilities disrupted and delayed the contractor's work. The contractor's main claim was that the department delayed the work by imposing new traffic control measures for construction, which the department withdrew four months later, going back to the original traffic control plans.

The contractor claimed the department's actions cost the contractor an additional \$880,000. After meeting five times in eight months and after very spirited negotiation, the DOT settled the contractor's claims for approximately \$220,000. Counsel for the contractor complimented the representatives of the department and the AG's office in its settlement acceptance letter stating it was a "pleasure meeting and working with you both. You both exemplify the professional, yet fiscally conservative nature of DOT." It was a lesson to the AAG involved to always keep talking and attempting resolution, even when there

are hundreds of thousands of dollars apart. AAG Joan Wilson represented the state.

Juneau access materials contract cancelled. At Governor Sarah Palin's direction, the Department of Transportation & Public Facilities (DOT&PF) cancelled a materials contract totaling nearly \$11 million, related to the Juneau-Lynn Canal Highway project. The cancelled contract was for concrete girders which would have been used to construct bridges on the Juneau-Lynn Canal Highway. AAGs Peter Putzier and Jim Cantor helped the Governor's office and DOTPF resolve legal issues related to the cancellation.

Sand and gravel contract issues resolved. The Department of Transportation and Public Facilities alleged a supplier was not providing the quantity or quality of sand and gravel required by the supplier's contract. The sand and gravel was for use on icy roadways and runways. Through a lengthy iterative process of nudging and arguing, the Department received the sand and gravel required to meet its needs. AAGs Peter Putzier and Jeff Wildridge represented the state.

Alaska Housing Finance Corporation windows case settled. New windows installed in Alaska Housing Finance Corporation buildings failed and had to be replaced. The Alaska Housing Finance Corporation sued its contractor alleging the windows that failed were improperly manufactured and installed. The manufacturer and supplier were added as parties to the lawsuit. Former AAG Kari Kristensen prepared the case for trial before she was appointed to the superior court bench. AAG Joan Wilson enthusiastically continued Ms. Kristensen's trial preparation, while scheduling a pre-trial mediation. Mediation succeeded, with the defendants agreeing to pay AHFC \$300,000.

CRIMINAL DIVISION

Anchorage DAO

An Anchorage jury convicted Don Nanthavong of two counts of sexual assault, robbery, burglary, various assaults, and theft. At 8:30 in the morning, officers were dispatched in response to a reported robbery and sexual assault. Officers contacted a woman wearing only a tee-shirt and a towel. Her head and face were wrapped in duct tape. The woman told officers a man that she believed to be her friend, Don Nanthavong, had walked into her apartment wearing a mask over his face with cut-outs for his eyes and mouth. Nanthavong pointed a gun at her. He bound her head, wrists and mouth with duct tape and also hand-cuffed her wrists. He sexually assaulted her, with her five-year-old child present for at least some of the attack. He left, taking her Louis Vuitton purse, her wallet containing credit cards and identification, and her cell phone with him.

Officers went to Nanthavong's residence and saw a piece of duct tape and a pair of the victim's underwear in his car in the driveway. Officers contacted Nanthavong, who initially denied assaulting the victim, but eventually stated that if the evidence pointed to him then he did it for revenge because the woman had taken money from him and had talked about him.

Tristan Curry was convicted of nine counts of sexual abuse of a minor involving two victims. Curry, who operated a professional babysitter service with his wife, cared for two sisters (ages eight and nine) over a nine year period while their father worked at night. Their mother had moved out of state and was no longer involved in the children's daily activities. Over time Curry's family became like family to the two sisters. The victims tolerated frequent varied sexual touching by the defendant because of their close relationship with the defendant's family. The victims finally reported the abuse after repeatedly warning the defendant they would tell if he didn't

stop. During an interview with detectives, the defendant admitted that there was “some truth” to what the victims had reported. The jury agreed.

Che Matus was convicted of two counts of criminal mischief and one count of violating a domestic violence protective order. Matus, angry over the demise of his romantic relationship, called his former girlfriend’s residence in violation of a current domestic violence protective order. He told her over the phone that if she did not go outside to speak with him he would ram her car. As she listened in horror on the phone, he counted down from five and then she heard a loud crashing sound. The victim was too terrified to open her door and look outside. When officers arrived they observed her car, which had been hit from the rear with enough force to push it through a fence into her apartment building. While officers were there taking a report from the victim, Matus called and told her he was going to kill himself. The victim was so terrified that she left her apartment for the night because she was afraid he would return and harm her.

Mitchell Valentine was convicted of an aggravated felony assault by plea after it was revealed mid-trial he had been calling the victim from jail, threatening the victim and attempting to persuade her not to testify. Valentine was on trial for a fear assault after pointing a gun at his former girlfriend and threatening to kill himself. ADA Olson was preparing the victim to testify. She expressed concerns the defense attorney was going to attempt to discredit her on the stand. ADA Olson asked her how she became aware of the defense strategy. She responded that the defendant had been calling her from jail and told her what they planned to do and why she shouldn’t testify. A search warrant was obtained for jail telephone records, which corroborated that Valentine had called his victim from jail more than twenty times. In response to this new evidence, Valentine decided he was “ready to plead” to an aggravated felony assault.

Patrick Torrance was convicted of felony assault after strangling his male co-worker, Justin Giles.

Torrance and Giles were security officers at the Barratt Inn. They were not getting along well at work. Torrance became enraged when Giles challenged him to an online IQ test to resolve their differences. The beginning of the altercation was caught by a hotel surveillance camera. The strangulation however, occurred just off camera. Giles sustained petechiae in both eyes and a burst blood vessel in his left eye. At trial, Torrance claimed self-defense because Giles, a former marine, “wielded” a pen at him (which we all know is mightier than the sword). The jury disagreed.

Bethel DAO

Ever since ADA Dawson Williams left Bethel in February to become the magistrate in Dutch Harbor, the ever busy Bethel office has been short-handed. This update comes from ADA Regan Williams of the Rural Prosecution Unit:

Bethel ADAs handle 56 surrounding villages in six courts: Bethel, Aniak, Chevak, Emmonak, St. Mary’s, and McGrath. All of former ADA Williams’ cases were transferred to ADA David Buettner, who is now the sole (non-alcohol) misdemeanor attorney for the YK Delta. As of now, ADA Buettner has 157 active misdemeanor cases, 25 active C felonies, and 87 active petitions to revoke probation. ADA Buettner is the first to arrive at the office and the last to leave, and can often be found working on the weekends. The office appreciates ADA Buettner’s handling the extra work load.

ADA Tom Jamgochian secured \$30,000 in restitution from six Texans who had their Alaska trip ruined by an unlicensed guide in *State v. Richardson*, along with a conviction for six counts of outfitting without a license.

In a more troubling case, ADA Jamgochian handled the assault in the first plea of 16-year-old defendant M.N. of Kwethluk, for strangling a 13-year-old girl. The defendant admitted, without emotion or remorse, to driving the girl on a four-

wheeler to a secluded area of tundra way beyond the village, strangling her until she lost consciousness, and leaving her for dead. Temperatures were near freezing that night. No relationship was involved; M.N. stated he was simply motivated to commit a random act of violence, and did not expect anyone to find the girl nor to get caught. The young girl stumbled back into town the next morning.

ADA Lance Joanis secured a 17-year conviction against a man who sexually assaulted a minor girl. ADA Joanis held firm on the case, refusing to accept lesser offers.

In the homicide case *State v. Andrew*, DA Joe Slusser reports Tommy Andrew agreed to plead guilty (not no contest) to murder 2, open conditions of probation with a floor of 30 years and a cap of 40 years to serve.

DA Slusser is also involved in some interesting motion work in another active homicide, *State v. Thomas*.

ADA A.J. Barkis had surgery in Anchorage on a Thursday, and was in trial in Aniak the following Monday. During trial, his stitches burst. He was treated in the ambulance, where fluids were drained, bandages changed, and stitches re-secured. ADA Barkis returned to court the following day and won the case. Upon his return to Bethel that evening, he was admitted to the Bethel hospital for more formal treatment, but was scheduled to begin another trial in Bethel. At calendar call – on his behalf, DA's asked the court for a 24-hour continuance to allow ADA Barkis some rest, before starting his felony DUI trial scheduled to begin the next day. The court denied the request, stating that another attorney should be able to jump-in and handle the felony. The court was informed that no other attorneys were available to jump-in, as all were scheduled in various court hearings. Thankfully, the state was granted its hard fought 24-hour continuance, and ADA Barkis completed that felony trial as well. In his short time in Bethel, he has tried 14 cases so far, and has many more looming on the horizon.

Fairbanks DAO

The grand jury has returned 40 indictments this month.

The felony unit received 40 new cases during the first three weeks of March. Only one of the felony referrals was for felony DUI.

The misdemeanor unit received 224 cases through the first three weeks of the month. Of that total 43 were new DUI cases. The unit continued with its intense trial schedule.

The March grand jury has been busy. They heard two murder cases in their first two weeks. A defendant on third party release from a Homer case decided that the third party situation was not working out. After shooting and killing the third party, the defendant shot another family member. When other family members took one firearm from the defendant he produced another, and in the ensuing scuffle over that firearm the defendant got shot.

In the other homicide case, a mental health worker had her neck slashed by a client who had threatened her a week or so prior.

At the end of February, ADA Jason Gazewood convicted David Hesch of assault in the first degree, kidnapping and misconduct involving a controlled substance in the fourth degree, for an incident in which Hesch held a female he erroneously thought was an informant and stabbed the female multiple times. The jury did not seem impressed with Hesch's description of the quality of the cocaine he was using during the incident.

ADA Frank Spaulding got a conviction in a felony failure to stop trial. The defendant failed to stop when troopers tried to stop her for speeding, she proceeded to the hospital. At the hospital, she told the troopers she was in a hurry to get treatment for splinters that she got in her bottom when falling on some wood. She then refused medical treatment.

Both the emergency room physician and the troopers observed that she was displaying obvious signs of methamphetamine ingestion. The jury did not accept her necessity defense.

In the wrong time to commit a crime department, three young men decided came up with a plan to rob a pizza delivery driver. The trio, two 18-year-olds and a 17-year-old, ordered the pizza to be delivered to a vacant apartment near the 17-year-old's residence. The trio waited in a stairwell until the deliveryman arrived. They then threatened him with a gun and relieved him of cash, the pizzas and an MP3 player. The trio then proceeded to the 17-year-old's apartment leaving the only set of footprints in fresh snow leading from the scene of the robbery to the apartment.

Juneau DAO

The month of March was a busy one. The Juneau office was covering the Sitka office from March 12th (and is scheduled to do so through April 9th) so that ADA Gregg Olson and AAG Dwayne McConnell could try *State v. Haube* in Ketchikan.

Haube is the second part of a three defendant homicide that occurred in Petersburg. One defendant pled out, the other defendant was previously tried in Petersburg and the result was a hung jury.

Kenai DAO

Trials

ADA Scot Leaders successfully brought a murder trial to a conclusion after five grueling weeks, with the jury finding the defendant guilty of manslaughter. This outcome was a tribute to ADA Leader's abilities and endurance.

ADA Angela Jamieson was about to start a trial with the infamous Evans Austin of the "Austin limit" relating to sentencing of first-time felony

offenders. In his career, Mr. Austin has now progressed from his initial "limit" to facing his sixth felony conviction. The morning of trial, with the jury in the wings, the defense attorney filed a motion to dismiss the indictment based on an allegation of improper instruction to the grand jury. Despite the fact that the attorney signed the usual accompanying affidavit, he later admitted he could not open the grand jury CD and was not able to determine what instructions were, in fact, given. He acknowledged he did it to avoid having the trial when his client would not waive the rule. His motion was denied but there has been no ruling on any resulting sanctions.

Appeal

Special thanks go to the hard work of ADA Mick Hawley in getting the Supreme Court to rightly decide the search warrant issue in *State v. David Koen*. The defendant possessed a large amount of child porn and in a companion case molested his own daughter. In a yet-uncharged case, he molested his own son. All the significant evidence was suppressed by the trial judge because of what he perceived as a defect in the warrant. ADA Hawley convinced the Supreme Court to find that common sense is the rule when reviewing warrant. The defense is now seeking a plea.

Grand Jury

The grand jury had some record-setting DUI cases this month. One defendant had been arrested seven times in the past ten months for DUI. He pled to some during that time but not all of his convictions were entered into APSIN at the time of what should have been his first felony DUI arrest. But when he was last arrested, the word had spread and he was then indicted on two felony DUIs. Another defendant was arrested on her fourth felony DUI.

The grand jury indicted a father on 11 counts of sexual assault against a minor one and 11 counts of sexual assault against a minor two for molesting his 14-year-old daughter. They also

charged him with 64 counts of possessing child pornography. His pattern was to order the daughter to go to the store and buy Polaroid film. There would then be mutual shaving of their respective genital areas, and he would take lewd photographs of her. The officers served a search warrant at the store where the film was purchased and they found records of the first purchase, which included the camera, three packages of film, and one package of disposable women's razors.

Kodiak DAO

The office welcomed back ADA Steve Wallace who was in the Palmer office for three months, where he successfully prosecuted a murder case.

A 19-year-old Kodiak man was convicted of felony criminal mischief and misdemeanor assault following an unprovoked fit of anger at a teenage party. This defendant, who was heavily intoxicated at the time of the events, was ordered to serve 60 days in jail and complete alcohol treatment, which could include up to 90 days of residential treatment. He was also ordered to pay restitution for the damage to the apartment as well as for the victim's medical expenses. He was also ordered to refrain from ingesting any alcohol for the next five years.

The Kodiak grand jury indicted a 22-year-old Kodiak man for B felony drug possession (with intent to deliver) after his car was seized following his arrest for possession of drug paraphernalia (a crack pipe, with a trace amount of cocaine on it). The police applied for and received a search warrant to search the car, and discovered over 40 bindles of powdered cocaine, crack cocaine, and crystal methamphetamine. A June trial date has been established, and the defendant remains in custody after bail was established at \$25,000 cash only.

A 19-year-old defendant was convicted of attempted vehicle theft and sentenced to 360 days in jail with 300 suspended after stealing

and wrecking his parents' vehicle. Originally charged with first degree vehicle theft, it was believed that the state could not overcome the arguable defense that his parents reported the car stolen only after the police reported that they had found it wrecked, and that a pattern of historical use would defeat their claim that their son had taken it without their permission.

Nome DAO

Dennis Davison of Elim was charged with three counts of sexual assault one for the forcible rape of a young girl.

Alcoholic Beverage Control Board compliance checks produced two jury trials in Nome. Twice last year an investigator for the board came to Nome with teenage girls who attempted to buy alcohol from bars and liquor stores. The girls were "successful" nearly half the time, a disappointing rate in a town where community aggravation with underage drinking remains high. In the first case, Woody Sackett, owner of Anchor Liquor Store, sold beer to a 16-year-old girl without checking her ID; in the second, Marlene Cannon, bartender at Anchor Tavern, sold beer to the same girl despite examining the ID that disclosed the girl's young age. Both Sackett and Cannon were convicted and sentenced to time in jail.

Palmer DAO

Thirty one people were indicted so far this month on new felony charges.

A Palmer jury found Vanessa Wulf guilty of terroristic threatening after a short trial. On October 12, 2006, OCS took custody of defendant's son at Big Lake Elementary School. Several hours later, defendant called the school, stated "all your lives are in danger" and repeatedly mentioned a "sniper." Parents were contacted and some students were removed from

the school. Troopers apprehended Wulf the next day. ADA Michael Walsh prosecuted this case.

Kimberly Dubie was indicted by a Palmer grand jury on charges of murder in the second degree, manslaughter and criminally negligent homicide for the death of her eight-week-old daughter.

Dubie, while extremely intoxicated, left the child upside-down in a child seat, and she died of positional asphyxia. Dubie told investigators she did not remember what she did with her child due to her drunkenness. ADA Rachel Gernat handled the case for the state.

ADA Rachel Gernat also prosecuted the following cases:

Edward Huntington pled to one count of sexual assault in the first degree for forcing his adult daughter to have sex with him. He will be sentenced in June and remains in custody with no bail.

Carl Oyagak pled no contest to one count of assault in the third degree for strangling his wife because she did not make his coffee correctly.

ADA Suzanne Powell prosecuted the following cases:

Joe Jorgenson and Alvin Severance were sentenced to eight years with three years suspended for possessing seven ounces of heroin with the intent to deliver.

Terry Konkler pled to attempted misconduct involving a controlled substance in the second degree for possession of methamphetamine precursors, with an agreement that he will serve five years and an additional twenty two months on a probation violation.

Mitchell Nelson pled to theft in the second degree and agreed to serve three years in prison.

In Valdez, Frostine Monegan Hamilton pled no contest to assault in the second degree for seriously burning her step-son by placing him in

a tub of very hot water. As part of the agreement, Hamilton admitted three aggravators and will have to serve at least three years in prison (the judge can sentence her to more than three years). This case was handled by ADA Richard Allen.

ADA Jarom Bangerter prosecuted the following bench trials:

Marie Scott was convicted of DUI.

Mark Nason was convicted of misconduct involving weapons in the third degree (felon in possession).

[SAVE THE DATE](#)

May 2-4, 2007 Alaska Bar Association Annual Convention - Fairbanks

June 19-21, 2007 NAAG Summer Meeting - Atlanta, Georgia

July 22-25, 2007 CWAG Annual Meeting - Anaheim, CA